

40.630 PROCEDURES

40.630.010 Impact Fee Revision

~~A. Impact fee rates, other than park impact fees, shall be adjusted periodically to reflect changes in costs of land acquisition and construction, facility plan projects and anticipated growth. Such adjustments shall only become effective upon adoption by the board of a modification to the capital facilities plan; provided, that the capital facilities plan may contain provision for automatic revision of an impact fee rate no more often than annually to reflect the change in a generally recognized and applicable inflation/deflation index.~~

~~B. Park impact fee rates may be revised using the following process:~~

- ~~1. The adopted Park Impact Fee Program Technical Document may be revised periodically by the Board when financial analysis establishes that there is a need for a major program update. Such adjustments shall only become effective upon adoption by the Board.~~
- ~~2. Between major program updates, the calculated park impact fee will be adjusted annually to account for inflation/deflation using the indexing methodology described in the adopted Park Impact Fee Technical Document. Such adjustments shall only become effective upon adoption by the Board.~~

(Amended: Ord. 2009-11-06)

40.630.020 Impact Fee Schedule

The responsible official shall maintain and update as necessary a schedule of current impact fee rates.

40.630.030 Calculation of Impact Fee

A. The impact fee for a nonresidential development shall be computed by applying the traffic impact fee formula set out in Section 40.620.010. The impact fee for a residential development shall be computed by applying the traffic impact fee, park impact fee and school impact fee formulae set out in Sections 40.620.010, 40.620.020 and 40.620.040 combining the results; provided, that the school impact fee component shall not apply to housing which by design or restrictive covenant is exclusively for persons sixty-two (62) years of age or older.

B. If the development for which approval is sought contains a mix of uses, the impact fee must be separately calculated for each type of use.

C. The development approval authority setting the impact fee upon application by the developer supported by studies and data may reduce or eliminate such fee if it is shown that:

1. The formulae contained in Sections 40.620.010, 40.620.020 and/or 40.620.040 do not accurately reflect traffic, park or school impact; or
2. Due to unusual circumstances:
 - a. Facility improvements identified for the applicable service area are not reasonably related to the proposed development, or
 - b. Such facility improvements will not reasonably benefit the proposed development; or
3. The current development proposal implements a concomitant rezone agreement or other development approval pursuant to which public facilities were dedicated or constructed prior to October 1, 1984, which are of benefit to the community at large and which otherwise likely would have been designated as system improvements.

D. Prior to making an application for a building permit or site plan approval, an applicant upon payment of the applicable fee provided for in Title 6, may request an impact fee determination from the director, which determination shall be based upon information supplied by the applicant sufficient to permit calculation of the

impact fee. The impact fee determination shall be binding upon the county for a period of one (1) year unless there is a material change in the development proposal, the capital facilities plan or this chapter.

40.630.040 Collection of Impact Fee

A. The impact fee imposed under this chapter shall be due and payable at the time of issuance of a building permit (or site plan approval when no building permit is required) for the development.*

B. For the transportation impact fee, the developer has the option to pay in a lump sum, without interest, or by installment with reasonable interest over a period of five years. The county will require security for the obligation to pay the transportation impact fee, in the form of a recorded agreement and lien, a deed of trust, a letter of credit, or other instrument determined satisfactory by the development approval authority.

(Amended: Res. 2009-06-07; Ord. 2012-05-25)

* Code reviser's note: Sections 2 and 3 of Resolution 2009-06-07 provide:

"Section 2. Developers of plats meeting the conditions in Section 1 of Resolution No. 2009-04-11, adopted on April 28th, 2009, developing in every school district except the Vancouver School District, may pay the school impact fees in accordance with Section 3 of this Resolution, instead of paying the entire recalculated school impact fees prior to the issuance of building permits as is otherwise required under CCC 40.630.040. Developers in the Vancouver School District shall pay school impact fees prior to the issuance of a building permit.

Section 3. School impact fees may be paid in two installments, provided the developer signs and records a school impact fee assessment in a form that is acceptable to the county and school district attorneys prior to making the first installment payment. The first installment payment shall be paid prior to the issuance of a building permit and shall consist of no less than the school impact fee amount that was calculated at the time of preliminary plat, short plat or site plan approval. The second installment (or all installments if the parcel is sold prior to building permit issuance) shall be paid prior to transferring title to the property (at closing), as reflected in the recorded school impact fee assessment. The person signing the school impact fee assessment is ultimately responsible for ensuring the total impact fee is paid."

40.630.050 Impact Fee Exemptions

The following developments shall be exempt from the requirement for payment of impact fees:

A. Publicly operated primary and secondary schools, including facilities of an E.S.D., excluding comprehensive high schools. The traffic impact fee for a comprehensive high school may be reduced based on special studies that consider factors such as minimizing the size of school parking lots, adoption/enforcement of no parking and permit parking areas near schools, implementation of commute trip reduction and other travel demand management strategies, scheduling of school activities and events off-peak, and the consideration of pass-by and diverted traffic.

B. The impact fee for an exempt development shall be calculated as provided for in this chapter and paid with public funds. Such payment may be made by including such amount(s) in the public share of system improvements undertaken within the applicable service area.

(Amended: Ord. 2007-09-14)

40.630.060 Impact Fee Credits

A. The developer shall be entitled to a credit against the applicable impact fee component for dedication of land for, and reasonable documented construction acceptable to the county engineer associated with the improvement to, or new construction of, any system improvements provided by the developer (or the developer's predecessor in interest), to facilities that are identified in the capital facilities plan in place at the time impact fees are calculated or recalculated as set forth in Section 40.610.040 and Section 40.630.030. Such dedication or construction must be required by the county as a condition of approval for the immediate development proposal. Credits shall be issued at the time impact fees are imposed as set forth in Section 40.610.040.

B. For the traffic component of the impact fee, credits shall be based upon estimated costs set forth in the capital facilities plan. Credit shall be calculated by multiplying the proportion of the total system improvement being provided by the developer times the estimated cost of such system improvement in the capital facilities plan; provided, that the County Engineer may adjust the credit to account for extraordinary cut, fill or structural costs which are reflected in the plan estimate.

C. Additionally, the developer may be provided a credit against the impact fee in an amount up to ten percent (10%) of the traffic component thereof for the value of mass transit facilities that are approved by the county and made a condition of approval for the development.

D. Where impact fees are owing prior to completion of a system improvement undertaken by the developer, the impact fee shall be reduced by eighty-five percent (85%) of the allowable credit up to the amount of the impact fee for the subject development when the system improvements have been assured by a bond or other guarantee to be completed no later than the date of occupancy for commercial/industrial/multifamily structures or the final building inspection for single-family and other uses. Upon completion of the required system improvement, the remainder of the credits will be issued.

E. Credits recognized by the county may be utilized in lieu of cash payment of impact fees for the subject development and/or any other development within the same service area; provided, that PIF credits shall first be applied to offset impact fees for the subject development.

F. In the Highway 99 Overlay district, the developer may be eligible for credits or trip reductions as set forth in the Traffic Impact Fee Technical Document.

(Amended: Ord. 2010-07-07)

40.630.070 Appeals

The determination of the development approval authority as to the applicability and amount of and credit against an impact fee shall be appealable as provided for in this section. In the case of impact fees set pursuant to residential subdivision, residential short subdivision or site plan approval, the appeal shall be filed in conjunction with, and within the limitation period applicable to, the available administrative appeal from such approval. In the case of impact fees first imposed or recalculated or credits determined in conjunction with a building permit not involving subdivision, short subdivision or site plan approval, the appeal shall be filed pursuant to Chapter 40.510.

(Amended: Ord. 2011-08-08)

40.630.080 Impact Fee Fund

There is created and established a special purpose, non-lapse impact fee fund. The county auditor shall establish separate accounts within such fund and maintain records for each such account whereby impact fees collected can be segregated by type of facility and by service area.

A. All interest shall be retained in the account and expended for the purposes for which the impact fees were imposed.

B. By April of each year, the county auditor shall provide a report for the previous calendar year on each impact fee account showing the source and amount of moneys collected, earned or received and system improvements that were financed in whole or in part by impact fees.

40.630.090 Interlocal Agreements

A. The county may enter into an interlocal agreement with any city or town located within the county to provide for a coordinated and integrated joint program of impact fees for public roads, streets, parks and open spaces consistent with the provision of this chapter and state law.

B. School impact fees shall not be collected on behalf of any school district until such district enters into an interlocal agreement with Clark County providing for submittal of capital facilities plans, fund administration, report of expenditures, allocation of risk, and other appropriate matters. Where a city adopts a substantially similar school impact fee for a district whose boundaries include portions of unincorporated Clark County, such interlocal agreement may include the city. The interlocal agreement may include a fee to cover the county's cost of administering the school impact fee program.

40.630.100 Expenditures

Impact fees for system improvements shall be expended only in conformance with the capital facilities plan. Impact fees shall be expended or encumbered for a permissible use within six (6) years of receipt, unless there exists an

extraordinary and compelling reason for fees to be held longer than six (6) years. Such extraordinary or compelling reasons shall be identified in written findings by the board.

40.630.110 Refunds

A. The current owner of property on which an impact fee has been paid may receive a refund of such fee if the county fails to expend or encumber the impact fees within six (6) years of when the fees were paid or such other period of time established pursuant to Section 40.630.100 on public facilities intended to benefit the development activity for which the impact fees were paid. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first-in, first-out basis. The current owner likewise may receive a proportionate refund where the public funding of applicable service area projects by the end of such six (6) year period has been insufficient to satisfy the ratio of public-to-private funding for such service area as established in the capital facilities plan. The county shall notify potential claimants by first class mail deposited with the United States Postal Service at the last known address of claimants.

B. The request for refund money must be submitted to the County Board of Commissioners in writing within one (1) year of the date the right to claim the refund arises or the date the notice is given, whichever is later. Any impact fees that are not expended within these time limitations, and for which no application for refund has been made within this one (1) year period, shall be retained and expended on the indicated capital facilities. Refunds of impact fees under this subsection shall include interest earned on the impact fees.

C. A developer may request and shall receive a refund, including interest earned on the impact fees, when the building permit for which the impact fee has been paid has lapsed for noncommencement of construction. A partial refund shall be provided where the project for which a building permit has been issued has been altered resulting in a decrease in the amount of the impact fee due.

40.630.120 Impact Fee as Additional and Supplemental Requirement

The impact fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the county on the development of land or the issuance of building permits; provided, that any other such county development regulation which would require the developer to undertake dedication or construction of a facility contained within the county capital facility plan shall be imposed only if the developer is given a credit against impact fees as provided for in Section 40.630.060.

(Amended: Ord. 2004-06-09)